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DECISION



21299
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-199042

DATE: March 25, 1982

MATTER OF: James W. Byron

DIGEST: An employee is entitled to real estate expenses for selling his home at his old duty station only if the home was his residence when he was first definitely notified by competent authority of his transfer to a new duty station. A Government employee sold his home and occupied an apartment 6 months before he received official notice of an appointment to be a Special Agent with the Federal Bureau of Investigation. Advice of an agency recruiter that he stood a good chance of appointment and that if appointed he would be transferred to another duty station after training does not satisfy the requirement that an employee must receive a definite notice of transfer while residing in the residence for which he claims selling expenses.

The issue in this case is whether the employee's home at his old duty station was his residence when he was first definitely notified of his transfer to a new duty station. Since additional evidence does not show that the employee had been definitely advised that he would be appointed to a position with the Federal Bureau of Investigation (FBI) at the time he sold his residence our decision in Matter of James W. Byron, B-199042, March 3, 1981, is sustained.

While an employee of the Internal Revenue Service (IRS) in Boston, Massachusetts, Mr. Byron applied for a position as Special Agent with the FBI. On January 19, 1977, the FBI informed him that because it lacked funds no appointments would be made until after fiscal year 1977, ending September 30, 1977. However, Mr. Edward P. McNulty, Applicant Coordinator in the Bureau's Boston Office, strongly suggested that Mr. Byron would be offered an appointment because of his previous experience and qualifications. Mr. McNulty encouraged Mr. Byron to take care of any significant personal matters that might interfere with accepting a position.

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Mr. Byron told Mr. McNulty that he was considering selling his home in Boston, since an appointment was relatively certain and Mr. McNulty believed an FBI assignment in Boston was unlikely. According to Mr. Byron, Mr. McNulty agreed that selling the Boston home would be advisable. Consequently, anticipating a transfer to the FBI as Special Agent and a permanent station other than Boston Mr. Byron sold his home on April 27, 1977, but was not appointed to the FBI position until November 21, 1977. He transferred to the FBI without a break in service. While he was in FBI Special Agent training at Quantico, Virginia, his family remained in an apartment that he had rented and occupied after selling the home. Upon completion of FBI training, his family joined him shortly after he reported to this permanent duty station in Pittsburgh, Pennsylvania.

The FBI certifying officer denied reimbursement on the basis that the Boston home was not "the employee's residence at the time he was first definitely informed by competent authority of his transfer to the new official station," as required by paragraph 2-6.1d of the Federal Travel Regulations (FTR), FPMR 101-7, May 1973. His reason for disallowance was our decision B-177643, April 9, 1973, which held that paragraph 2-6.1d is not satisfied by notifying the employee of the mere possibility of a transfer to a new duty station before the employee leaves his home and it is no longer his residence.

Mr. Byron asked for reconsideration of his case based on additional evidence we received after our decision in a letter from Mr. McNulty dated April 24, 1981.

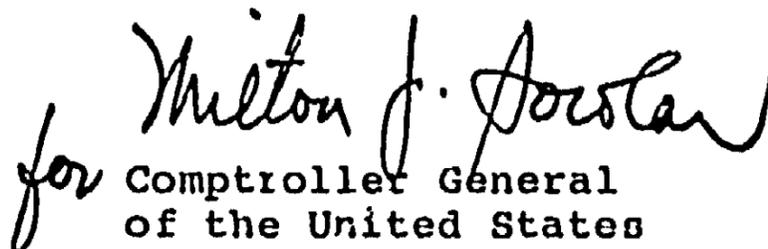
Mr. McNulty, now retired from the FBI, states in his letter that he was Applicant Coordinator in the Boston Office from May 1967 until August 1978. He recruited the best qualified candidates for employment and processed their applications. His letter explains that Mr. Byron was processed during 1976-1977 as a Special Agent Accountant applicant when there was great emphasis placed upon recruiting accountants. Mr. Byron was already a Government employee having invaluable, proven experience with the IRS

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Strike Force. Mr. McNulty contacted Mr. Byron's supervisor to insure that IRS would not object to Mr. Byron being employed by the FBI. We do not question the fact that Mr. Byron was given to believe that his chances of being appointed to the FBI position were good. Also, that he was advised that if he was appointed he would not be assigned to permanent duty in Boston. However, Mr. Byron's contacts with the recruiting coordinator and the possibility of his appointment and subsequent transfer do not amount to a notification of selection for appointment. He was merely advised that his chances of appointment were good.

We have not overlooked the rule that for the purpose of entitlement to residence selling expenses, a verbal notification of tentative selection for a position constitutes a clear intention to transfer an employee. Gerald S. Beasley, B-196208, February 28, 1980, and cases cited. However, in this case as held by the FBI in settling this claim, Mr. Byron was not advised of his tentative selection, he was merely advised that at some date in the future he stood a good chance of being appointed to the FBI.

Accordingly, we do not find that Mr. Byron is entitled to reimbursement of the costs he incurred in selling his residence in Boston prior to his appointment as a Special Agent with the FBI.

for  Milton J. Forster
Comptroller General
of the United States